

Criminal Law Update

7th July 2005



Since the last update on 30th May 05 there have been a number of legislative developments which should be noted.

Domestic Violence, Crime and Victims Act 2004

The title of this Act may make criminal practitioners think it is not really relevant to our practices. In fact the Act makes a number of significant changes in substantive law and practice as noted in the update in December 2004. So far there has been one commencement order (No.1) (see Criminal Law Week 05/11/36). This has brought into force some significant changes e.g. from 21.3.05 ss.5 to 8 which allow a new charge of causing or allowing the death of a child as an alternative to murder/manslaughter. The new fitness to plead provisions (i.e. trial of the issue by judge alone) covered by ss. 22 to 26 come into force from 31.3.05 along with intermittent custody in s.31. For cases in which arraignment takes place after 31.03.05 s.5 of the Criminal Procedure (Insanity) Act 1964 is replaced by a new s.5 and 5A which set out the court's powers to deal

with those found not guilty by reason of insanity or those found unfit to plead under the new "judge only" provisions – see Archbold 2005 2nd supplement para. 4-175 and 175a.

There is an important article in Archbold News No 2 of 2005 which explains the major changes introduced by this Act.

Serious Organised Crime and Police Act 2005

Again there has so far been just one commencement order (No.1) (CLW 05/ 23/19). This covers various things such as money laundering offences (ss.103 to 107), harassment in ss.125 to 127 and anti-social behaviour in ss.139 to 143.

Drugs Act 2005

The Commencement Order No.1 issued on 22nd June brings into force s. 21 from 18.7.05 which adds psilocin mushrooms to the list of Class A drugs.

Case Law

For those dealing with cases involving allegations under the Sexual Offences Act 2003 (which came into force on 1st May 2004) there has been an interesting and potentially very important decision at first instance which may highlight a serious problem with the new legislation. The case is called *R. v. Newbon* [2005] 4 Archbold News 6, Crown Court (at Stoke-on-Trent) (HHJ Glenn) (24/02/2005). The case involved an allegation of rape. Because the complainant in his video interview was unsure as to whether the offence occurred before or after 1st May 2004 the indictment contained two counts for this single incident, one charging rape under the 1956 SOA and the other in identical terms charging an offence under the 2003 Act. At trial the evidence as to when the offence was committed remained unclear. At the end of the prosecution case the defence submitted that since it was unclear which Act had been contravened the jury could not be sure which of the two counts had been made out and therefore there was no case to answer. The judge, who was obviously not happy with this outcome described the law as "nonsensical and outrageous" but nonetheless felt compelled to accede to the defence submission.

At first glance the significance of this case may not be obvious but in fact it would appear that this problem could easily recur and in fact become more difficult as time goes by. The longer the time that goes by in years to come and memories fade this problem could be a real one. Whenever an allegation is made of rape or other sexual

offence and the incident is said to have occurred at a date around 1st May 2004 the problem will arise as to which Act has been contravened.

The case has been digested in Archbold News with a commentary by Nicola Padfield the editor. Her view is that unless the Crown can prove which Act has been contravened they will be unable to obtain a conviction. However in *Criminal Law Week* (CLW 05/22/12 the editor James Richardson has suggested what would appear to be a simple answer, namely to indict the offence in a single count where the statement of the offence sets out both the offence under the 1956 Act and the 2003 equivalent. He suggests that this would not be an alternative allegation giving rise to a claim of duplicity and that in any event alternative allegations are commonly found in indictments. On the face of it that seems to be a reasonable solution for a case such as *Newbon* itself where the particulars of the offence would be the same whichever Act was involved. However, as James Richardson points out this would not appear to be a solution in a case where the Crown sought to rely on the expanded definition of an offence under the 2003 Act which did not apply to the same offence under the 1956 Act. It seems therefore that it will be advisable to bear in mind the potential difficulties that may arise where a sexual assault is alleged to have occurred on dates around 1st May 2004 when the legislative change took place. Indictments and the facts supporting them will need to be scrutinised with care.

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